In the High Court of Punjab and Haryana at Chandigarh

C.E.A. No. 167 of 2006

Date of Decision: 26.2.2007

Commissioner of Central Excise Commissionerate, Delhi-III

…Appellant

Versus

M/s Dynamic Industries

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mrs. Daya Chaudhary,
Assistant Solicitor General of India,

for the appellant.

JUDGMENT

M.M. KUMAR, J. (Oral),

The revenue has approached this Court by filing instant appeal under Section 35-G of the Central Excise Act, 1944, against the order dated 10.2.2006, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (CESTAT). It has been claimed that the following substantial question of law would arise for our determination:-

> "Whether the party is admissible to avail the CENVAT Credit on rejected finished products being received in depleted condition or non-usable or non-repairable from their customers?"

We have heard Mrs. Daya Chaudhary, learned Assistant Solicitor General of India and with her assistance gone through various orders passed by the Authority including order of the Tribunal. A perusal of the order passed by the Tribunal shows that the so called admission made by Shri K.M. Gupta stand explained by contemporaneous documentary evidence and on that basis it has been categorically found that the finding given by the adjudicating as well as the appellate authority was not sustainable and was liable to be reversed. Accordingly, it has been held that the order in original and in appeal were not sustainable. We find that there is no question of law much less substantial question of law warranting our interference because the matter lies in the arena of appreciation of evidence, which cannot be done by us under Section 35-G of the Central Excise Act, 1944, which restrict our jurisdiction only to adjudicate substantive question of law.

Accordingly, the appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

February 26, 2007

Pkapoor